

# United States Court of Appeals

District of Columbia Circuit  
Washington, D.C. 20001-2866

Mark J. Langer  
Clerk

(202) 216-7300

Dear Counsel:

Enclosed is an order concerning your appointment as counsel pursuant to the Criminal Justice Act of 1964 (hereinafter, CJA, or the Act). The Court appreciates the fact you are shouldering this responsibility despite the modest sums made available by the Act. Please note that this order also establishes a schedule for the critical procedural steps of the appeal.

The following is general information which should be of assistance to you. Please keep in mind that the Office of the Federal Public Defender can be an excellent resource, and appointed counsel are always welcome to call that office for assistance. You may also wish to consult the Court's web site at **[www.cadc.uscourts.gov](http://www.cadc.uscourts.gov)** for information. The site allows on-line viewing and printing of court forms, the Circuit Rules and Handbook, the CJA plan and relevant notices, the oral argument calendar, court opinions, and other information concerning the Court.

## **FORM OF FILING:**

Any submission you make to the Court should contain a notation beneath your name that you have been appointed, i.e.,

John Smith  
Counsel for Appellant  
(Appointed by this Court)

## **CONTACTING THE CLIENT:**

You should initiate contact with your client as soon as possible to advise of your appointment and to assure him or her the appeal is proceeding. This is particularly important since your client may be sent outside the immediate area to serve his or her sentence. Your client should be periodically informed of the progress of the appeal. Additionally, you should interview your client in person (or by telephone if he or she is incarcerated outside the jurisdiction) and provide an opportunity to your client to express views on the issues to be raised on appeal. If your client is incarcerated outside the immediate vicinity, and an in-person visit would require significant travel expenses, e.g.,

airfare, overnight lodging, etc., you must obtain prior authorization in order to ensure full reimbursement of travel time and expenses. Travel authorization should be sought by submitting a letter to the Chief Judge, which includes a justification for the travel requested and an estimate of the expenses to be incurred.

### **MOTION FOR RELEASE:**

If an appellant is incarcerated, he or she should be advised of the right to apply for release pending appeal. If it is your judgment after investigation of the facts and the law that the filing of a motion for release pending appeal is appropriate, such motion must be addressed to the District Court in the first instance, provided such has not already been done. If the District Court's disposition of the motion is or was unfavorable, you may file a similar motion in this Court. It is not necessary to file an appeal from the order denying release.

Please note that a copy of the District Court's order and its statement of reasons for denying such a request must be provided with any motion to this Court requesting release pending appeal. See Fed. R. App. P. 9 and D.C. Cir. Rule 9. Failure to provide this Court a copy of the District Court's order and statement of reasons may delay processing of the motion.

### **TRANSCRIPTS:**

It is important that you promptly review the District Court docket and consult with trial counsel and the District Court Clerk's Office (Room 1225, 202/354-3060) to determine whether all transcripts you consider necessary for the appeal, including pretrial proceedings, have been ordered by trial counsel. If they have not been ordered, you must file an application (CJA Form 24) in the District Court for their preparation. The Clerk of the District Court will provide you the application form. After approval of the CJA Form 24 by the District Court, you should contact the Court Reporter to obtain the estimated date of completion. If the reporter gives a completion date which exceeds thirty days from the date of the transcript order, his or her attention should be directed to Fed. R. App. P. 11(b). In cases involving multiple appellants, there are special procedures to follow. Please call the District Court Clerk's Office for details.

All action concerning verification or ordering of the transcripts should be completed within 15 days. You should provide this office with status reports at 15-day intervals until completion of the transcript. See scheduling order.

### **THE BRIEF AND RECORD:**

Once you notify this office that transcripts have been completed, you will receive a briefing schedule. The case will be screened by the Legal Division, normally after

appellant's brief is filed. If oral argument is deemed appropriate, the Clerk's Office will notify you of the argument date and the composition of the merits panel.

In the event you conclude that the appeal presents no non-frivolous issues, you may file a motion to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), and Suggs v. United States, 391 F.2d 971 (D.C. Cir. 1968). The memorandum accompanying the motion to withdraw must set forth the arguments your client wishes to assert, as well as issues you have considered, and the most effective arguments which can be made on behalf of your client. See D.C. Circuit Handbook of Practice and Internal Procedures 26 (2000). Both documents are to be served on your client, but only the motion to withdraw is to be served on government counsel.

You may reproduce the fifteen necessary copies of your brief and claim reimbursement on CJA Form 24, or the Clerk's Office will reproduce the brief for you. It is always your responsibility, however, to serve copies of the brief upon opposing counsel. An appropriate certificate of service must be submitted with the brief.

In addition to the brief, you must provide this office one suitably bound copy of all of the pages of the trial transcript you consider necessary and pertinent, accompanied by a cover sheet listing the pages included. You may also list any other documents, such as pleadings or exhibits, considered necessary. See D.C. Cir. Rule 24(a).

### **ORAL ARGUMENT:**

An order allotting the amount of time for oral argument will be mailed to you approximately two weeks before the argument date. Appointed counsel must present argument unless a motion to permit co-counsel to argue is granted by the Court.

### **POST-DECISION:**

In due course, a decision will be issued by the Court. You should promptly advise the client not only of the decision but, if the decision is adverse, of the availability of rehearing and a petition for writ of *certiorari*.

If the decision is in favor of your client, your appointment obligation would ordinarily end at this point, although most counsel consider it a part of their representation to at least set in motion the process to release the client from confinement, if necessary. If the decision in favor of your client is in the nature of a reversal or remand which would lead to further proceedings in the District Court, you are under no obligation to continue to represent him or her in these new proceedings. Should you wish to represent appellant in the District Court, you may move that Court for such appointment.

If the decision is adverse to your client, you should consider whether a petition for panel or en banc rehearing is appropriate. If it is your judgment that the case warrants such a step, your appointment extends to the preparation and filing of the petition for panel

or en banc rehearing. If it is your judgment that a request for rehearing is not warranted, you should promptly advise your client of that fact. If you feel a petition is not warranted, you are not required to file such a pleading, even if your client insists. The client may wish to file a pro se petition for panel or en banc rehearing. If so, you should advise him or her of the requirements and time factor. The Clerk's Office will reproduce the necessary copies of any petition, but you or the pro se appellant must serve copies upon opposing counsel and attach a certificate of service.

The situation with regard to a petition for writ of *certiorari* is different. If the client requests that such a petition be filed, you are under an obligation to do so only if non-frivolous grounds therefor exist, and your appointment by this Court pursuant to the Act extends to such proceedings. If you determine that there are no non-frivolous grounds for filing a petition for writ of *certiorari*, you must notify your client within twenty days of judgment that you will not file a petition, briefly explaining why. You must also inform your client about the procedures both for filing a petition for *certiorari* pro se and for asking the Court of Appeals to appoint new counsel to prepare a petition for *certiorari*. You should caution your client that it is unlikely the Court will appoint new counsel and that the client should be prepared to file a petition for *certiorari* pro se within the prescribed time. (A model letter is attached.) Once you have provided this notice to the client, you must notify the Court that your representation has ceased. The Clerk will notify the appellant in writing of the effective date of the termination of your appointment. If you fail to comply with the foregoing procedures, the Court may refuse to approve your voucher.

#### **VOUCHER FOR PAYMENT:**

Enclosed is your CJA Form 20 voucher entitled "Appointment of and Authority to Pay Court Appointed Counsel." The Act permits payment for services necessarily performed. It measures payment in terms of what is necessary for an experienced practitioner to devote to a case. You should recognize that if you are not familiar with criminal matters, your preparation will likely require you to devote time and study for which you may not be reimbursed but which you probably will not be required to repeat in future cases. You should keep an accurate time record. The voucher requires a detailed report of the time spent to support separate itemizations.

The completed voucher must be filed within 45 days of the final decision of this Court or within 45 days of the grant or denial of any petition for writ of *certiorari*.

**Revised 08/00**